



**Testimony of President Kirk Francis, United South and Eastern Tribes Sovereignty Protection Fund  
House Appropriations Subcommittee on Interior, Environment, and Related Agencies  
FY 2023 Tribal Public Witness Hearings, April 6, 2022**

Chairwoman Pingree, Ranking Member Joyce, and members of the Subcommittee, thank you for opportunity to provide testimony regarding our funding priorities and the President's Budget Request for Fiscal Year (FY) 2023. My name is Kirk Francis. I serve as the President of United South and Eastern Tribes Sovereignty Protection Fund (USET SPF). I am also the Chief of the Penobscot Indian Nation, located at Indian Island, Maine. My testimony will focus on funding for federal Indian programs at the Department of the Interior (DOI), the Indian Health Service (IHS), and beyond. As we await additional details on the President's FY 2023 Request via congressional justifications, we celebrate the historic nature of the Administration's proposals that have been released—namely, the proposal to substantially increase IHS funding and shift it to the mandatory side of the budget. This proposal represents a pivotal change in the way the U.S. meets its trust and treaty obligations, and an opportunity to more fully honor the federal government's sacred promises to Tribal Nations. As these promises have yet to be fulfilled, we urge this Congress demonstrate its desire to honor these solemn agreements by making these proposals a reality as a first step to expanding them to all agencies and programs serving Tribal Nations. We appreciate this Subcommittee's continued commitment to holding Tribal Public Witness hearings and look forward to working together to ensure these bold proposals are enacted.

USET SPF is a non-profit, inter-tribal organization advocating on behalf of thirty-three (33) federally recognized Tribal Nations from the Northeastern Woodlands to the Everglades and across the Gulf of Mexico. USET SPF member Tribal Nations are within the Eastern Region and Southern Plains Region of the Bureau of Indian Affairs and the Nashville Area of the Indian Health Service, covering a large expanse of land compared to other regions. Due to this large geographic area, USET SPF Tribal Nations have great diversity in cultural traditions, land holdings, and resources.

As the Subcommittee is well aware, Native people have endured many injustices as a result of federal policy, including federal actions that sought to terminate Tribal Nations, assimilate Native people, and to erode Tribal territories, learning, and cultures. This story involves the cession of vast land holdings and natural resources, oftentimes by force, to the United States out of which grew an obligation to provide benefits and services—promises made to Tribal Nations that exist in perpetuity. These resources are the very foundation of this nation and have allowed the United States to become the wealthiest and strongest world power in history. Federal appropriations and services to Tribal Nations and Native people are simply a repayment on this perpetual debt. USET SPF has consistently called upon the United States to deliver and fulfill its sacred promises to Tribal Nations and to act with honor and honesty in its dealings with Indian Country. The time is long overdue for a comprehensive overhaul of the trust relationship and obligations, one that results in the United States finally keeping the promises made to us as sovereign nations in accordance with our special and unique diplomatic relationship.

Over the course of our centuries-long relationship, at no point has the United States honored these sacred promises; including its historic and ongoing failure to prioritize funding for Indian country. The chronic underfunding of federal Indian programs continues to have disastrous impacts upon Tribal governments and Native people. As the United States continues to break its promises to us, despite its own prosperity, Native people experience some of the greatest disparities among all populations in this country and have for generations. It is no surprise, then, that the failures of the federal government have come into sharper focus due to the global pandemic. Decades of broken promises, neglect, underfunding, and inaction on behalf of the federal government left Indian Country severely under-resourced and at extreme risk during the COVID-19 crisis.

In December 2018, the U.S. Commission on Civil Rights issued the *Broken Promises* Report, following years of advocacy from Tribal Nations and organizations seeking an update to the 2003 *Quiet Crisis* Report. The Commission concluded that the funding of the federal trust responsibility and obligations remains "grossly inadequate" and a "barely perceptible and decreasing percentage of agency budgets." The report confirms what we in Indian Country already know—with the exception of some minor improvements, the U.S. continues to

neglect to meet its “most basic” obligations to Tribal Nations. Though these chronic failures have persisted throughout changes in Administration and Congress, it is time that both the legislative and executive branches confront and correct them.

**Mandatory Funding for the Indian Health Service and Binding Obligations.** Above all, the COVID-19 crisis has highlighted the urgent need to provide full and guaranteed federal funding to Tribal Nations in fulfillment of the trust obligation. Because of our history and unique relationship with the United States, the trust obligation of the federal government to Native peoples, as reflected in the federal budget, is fundamentally different from ordinary discretionary spending and should be considered mandatory in nature. Payments on debt to Indian Country should not be vulnerable to year to year “discretionary” decisions by appropriators. Honoring the first promises made by this country, in pursuing the establishment of its great principled democratic experiment, should not be a discretionary decision.

For the very first time, the Request proposes a shift in funding for the Indian Health Service (IHS) from the discretionary to the mandatory side of the federal budget, a move that stabilizes the agency and is more representative of perpetual trust and treaty obligations. Further, a substantial request of \$9.1 billion for IHS in FY 2023 includes a 10-year plan to close funding gaps, increasing IHS funding to \$36.7 billion in FY 2032—a 296% increase over this period—and exempting agency funds from sequestration. This change makes meaningful inroads in the chronic underfunding of the IHS, while responding to the dangerous instability the Indian Health System faces during continuing resolutions and government shutdowns. Year after year, USET SPF has urged multiple Administrations and Congresses to request and enact budgets that honor the unique, Nation-to-Nation relationship between Tribal Nations and the United States, including providing full and mandatory funding. While we firmly believe all Indian Country funding should be fully funded today, including the IHS, we recognize that the Biden Administration has taken an unprecedented and positive step forward in its proposal to move us closer to that reality.

In addition to doing so as a part of the IHS proposal, the Request proposes mandatory funding for Contract Support Costs and 105(l) leases—binding obligations—at BIA and the Bureau of Indian Education. While we contend that all federal Indian agencies and programs should be subject to mandatory funding, in recognition of perpetual trust and treaty obligations, we support the immediate transfer of these lines to the mandatory side of the federal budget. This will ensure that funding increases are able to be allocated to service delivery, as opposed to the federal government’s legal obligations.

These proposals represent a dramatic shift in federal Indian policy and the delivery of trust and treaty obligations—for which USET SPF has consistently and passionately advocated. Never before has an Administration issued a Budget Request that calls for mandatory funding, as well as a plan to substantially increase funding for an agency charged with fulfilling sacred promises to Tribal Nations. We now call upon Congress, and this Subcommittee in particular, to work with Tribal Nations and the Administration fulfill its responsibilities and work to ensure that these proposals are included in any final FY 2023 appropriations legislation.

While USET SPF takes a firm position that all members of Congress have an obligation to Tribal Nations, the members of this Subcommittee have a greater role in understanding and working toward fulfillment of trust and treaty obligations. As leaders who have consistently demonstrated a greater understanding of this commitment and obligation, we implore you to lead the change within Congress that is necessary to improve how the United States views, honors, and fulfills its promises to Indian Country, including through the enactment of these proposals. The federal budget is a reflection of this commitment. We recognize that there are many causes and issues that this body considers. However, we ask that you always remember this nation’s first promise to its First People—the promise that resulted in an exchange responsible for the vast wealth, power, and influence of this country.

**Reforming the Office of Management and Budget.** The Office of Management and Budget (OMB) asserts that over \$28 billion in federal dollars is appropriated to Indian Country annually. From the perspective of Tribal advocates, this number seems to be widely inflated, with far less actually reaching Tribal Nations and Tribal citizens. We suspect that OMB arrives at this figure by tallying the amount for which Tribal Nations and entities are “eligible”, regardless of whether these dollars actually reach Indian Country. Regardless, this represents less than 1/10 of 1% of the annual value that the U.S. enjoys from lands and the natural resources which once belonged to Tribal Nations and which stand as the source of the exchange between our two sovereigns that resulted in the obligations we are discussing today. Yet, despite the fraction of a percent that the figure represents, Indian Country once again finds itself here asking the U.S. to honor its promises. Both USET SPF and the Tribal Interior Budget Council (TIBC) have asked OMB for a full, detailed accounting of federal funding distributed to Indian Country. While OMB is working to refine its Native American Crosscut, we have not yet seen the level of detail we are seeking. This information is essential to the measurement of the federal government’s own success in meeting its obligations and the work of Tribal Nations. Congress must hold OMB accountable and require the agency to provide the necessary detail to support this funding claim on an annual basis, while demanding budgets containing full funding figures from federal agencies. In the long-term, we are seeking reforms to OMB that would include a consultation requirement, a dedicated Tribal Affairs department, and a Tribal advisory committee.

**Invest in and Rebuild Tribal Infrastructure—A Marshall Plan for Tribal Nations.** For generations, the federal government – despite abiding trust and treaty obligations – has substantially under-invested in Indian Country’s infrastructure. While the United States faces crumbling infrastructure nationally, there are many in Indian Country who lack even basic infrastructure. Following insufficient levels of funding for Tribal Nations in the Infrastructure Investment and Jobs Act, the United States must commit to supporting the rebuilding and restoration of the sovereign Tribal Nations that exist within its domestic borders. Much like the U.S. investment in the rebuilding European nations following World War II via the Marshall Plan, the legislative and executive branches should commit to the same level of responsibility to assisting in the rebuilding of Tribal Nations, as our current circumstances are, in large part, directly attributable to the shameful acts and policies of the United States. In the same way the Marshall Plan acknowledged America’s debt to European sovereigns and was utilized to strengthen our relationships and security abroad, the United States should make this strategic investment domestically. Strong Tribal Nations will result in a strengthened United States. At the same time, any infrastructure build-out, in Indian Country and beyond, must not occur at the expense of Tribal consultation, sovereignty, sacred sites, or public health.

**Promote Self-Governance through Interagency Transfer Authority.** USET SPF is working toward a future in which all federal dollars are eligible to be contracted or compacted under the Indian Self-Determination and Education Assistance Act (ISDEAA). In the meantime, we urge the Appropriations Committee to ensure all federal Indian funding can be transferred between federal agencies, so that it may be received through contracts and compacts. We cite the unnecessary delays and barriers to the receipt of urgently needed COVID-19 relief funding as an example of why this authority must be confirmed.

**Department of the Interior (DOI).** We are pleased to note that President Biden’s topline request for Indian Affairs within DOI is \$4.5 billion, which is a \$1.1 billion increase over the FY 2022 enacted level. This includes \$2.8 billion for BIA and \$1.6 billion for BIE. We support the targeted investments the proposal makes in public safety and justice, including funds to address the crisis of Missing and Murdered Indigenous People, social services, and Tribal climate resilience. We also note the historic and continued unmet funding obligations with regard BIA’s diverse line items and remain encouraged by the nearly across-the-board increases provided under the FY 2023 request. After years of budget requests proposing deep cuts to BIA, we urge Congress to work with the Biden Administration to enact substantial increases across the agency.

Working in partnership with Indian Affairs, the yearly budget formulation process now offers a much more comprehensive look at the priorities of Tribal Nations across the many lines and accounts found within the BIA and BIE budgets. However, we remain focused on the addition of a component or calculation of BIA's unfunded obligations in order to measure how well the U.S. is honoring its promises, on which Indian Affairs Leadership recently agreed to collaborate. This body should want to know the full extent of DOI's unmet funding obligations to Indian Country. We cite a recent report to Congress from DOI conveying placing a full funding total for just Public Safety & Justice programs at \$3 billion as the type of data we are seeking across the agency. We offer the Eastern Region's top priority in eight different strategic funding categories, all of which have received increases, many substantial, under the President's FY 2023 proposal. We urge Congress to maintain or exceed these increases:

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| <ol style="list-style-type: none"> <li>1. <u>Strengthening Tribal Communities: Social Services (TPA)</u></li> <li>2. <u>Trust-Natural Resources Management: Natural Resources (TPA)</u></li> <li>3. <u>Trust-Land &amp; Water Rights Management: Real Estate Services Program (TPA)</u></li> <li>4. <u>Public Safety &amp; Justice: Tribal Courts (TPA)</u></li> </ol> | <ol style="list-style-type: none"> <li>5. <u>Economic Development: Economic Development (TPA)</u></li> <li>6. <u>Education: Scholarships &amp; Adult Education (TPA)</u></li> <li>7. <u>Construction: Education Facilities Improvement and Repair</u></li> <li>8. <u>Resource Management Construction: Federal Power Compliance [FERC]</u></li> </ol> |
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**Indian Health Service (IHS).** While USET SPF lauds the Administration's high-level proposals for IHS funding, we are unable to comment on the President's FY 2023 Budget Request for IHS in greater detail, as proposed FY 2023 funding by line item is not yet available. We are pleased to see the proposed funding amount of \$9.1 billion, a substantial increase of \$2.5 billion over FY 2022 enacted. While we have consistently advocated for full funding<sup>1</sup> for IHS, as this is the only way to truly uphold fiduciary obligations to Tribal Nations, we greatly appreciate the Administration's commitment to increasing IHS resources and look forward to additional consultation on a full funding number. In addition to supporting a robust funding stream for current operations that reflects medical inflation, Nashville Area Tribal Nations identified the following top 10 priority line items for increases in FY 2023:

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| <ol style="list-style-type: none"> <li>1. <b>Hospitals &amp; Health Clinics</b></li> <li>2. <b>Purchased/Referred Care</b></li> <li>3. <b>Alcohol &amp; Substance Abuse</b></li> <li>4. <b>Mental Health</b></li> <li>5. <b>Electronic Health Record System</b></li> </ol> | <ol style="list-style-type: none"> <li>6. <b>Dental Health</b></li> <li>7. <b>Community Health Representatives</b></li> <li>8. <b>Maintenance and Improvement</b></li> <li>9. <b>Health Education</b></li> <li>10. <b>Self-Governance</b></li> </ol> |
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Nashville Area priorities and hot issues also include funding for Health Care Facilities Construction and the specific implementation of an Area Distribution Fund, Facilities and Environmental Health, continued support for newly federally recognized Tribal Nations, Hepatitis C prevention and treatment, funding for telehealth resources, Health Education, impacts of COVID-19 on user pop and workload data, constitutionality challenges, increases in SDPI funding, modernizing health IT, and parity in group payor authorities when sponsoring patients on insurance plans.

**Other Selected Lines and Programs.** Though not an exhaustive list, USET SPF strongly supports the continued funding and urges increases for the following lines and programs, with a goal of reaching full and mandatory funding for each: Good Health and Wellness in Indian Country (CDC), Rural Community Facilities (ACF), Tribal Opioid Response Grants (SAMHSA), Community Development Financial Institutions Fund grants, the Indian Community Development Block Grant, USDA Rural Business Development grants, EPA state and Tribal assistance grants, BIA Tribal Climate Science Centers, Tribal Historic Preservation funding, the 5% Tribal set aside from the Crime Victims Fund, and Native American Housing Block Grants.

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<sup>1</sup> Current estimates put full funding for IHS at approximately \$48 billion.